

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)	Bankruptcy No. 04-60106
)	
Daniel S. Miller,)	Chapter 11 Bky.
Debtor.)	
_____)	

MOTION OBJECTING TO EXEMPT PROPERTY

Kip M. Kaler, the attorney for the Official Committee of Unsecured Creditors, on behalf of that Committee, hereby objects to the Debtor's claim of exemptions. The committee makes the following specific objections:

1. The Debtor schedules an "IRA-Jarvis - \$2,000 and a St. Hilaire pension/Harvest States pension - \$38,803" as exempt under M.S.A. §550.37(24). The Committee has requested the Debtor provide documentation to evidence the true nature of these assets. The Debtor has yet to provide that documentation. Therefore, the Committee has been unable to determine that these assets are in fact the type of assets permitted to be exempt under this particular statute and, therefore, object to this exemption.

2. The Debtor schedules a number of life insurance policies, including a Pioneer Life insurance policy, Life Insurance of Southwest policy, 4 NW Mutual Life insurance policies, and a Pioneer Mutual life insurance policy. The last five of these policies are described as having cash values totaling over \$75,000. The Debtor seeks to claim as exempt \$7,200 of these assets as exempt. The Debtor needs to identify in particular which policy he wants that exemption to apply. The attorney for the Committee asked the Debtor to liquidate all of the policies, except the exempt value and turn those proceeds over for eventual application to the unsecured debt. The Debtor

has not done so. The attorney for the Committee has also requested documentation regarding the values, the declaration page of the policies and similar such information. To date no such information has been provided. Therefore, the Committee objects to the exemption of these assets.

3. The Debtor seeks to claim as exempt a vehicle identified in exhibit B-23. The Debtor values those assets at \$15,000. The Debtor seeks to claim as exempt \$3,500. The asset listed on B-23 contains approximately 20 items. The Debtor is limited to a single vehicle exemption and, therefore, he must identify the vehicle, which he seeks to claim as exempt, and the amount of his exemption. To the extent the vehicle has a value over the Debtor's exemption, that vehicle remains property of the bankruptcy estate but subject to the exemption. The bankruptcy estate will eventually need to liquidate that asset and at that time pay the exempt portion to the Debtor. On information and belief the Committee alleges that a portion of those assets are being consumed or depreciating and that equity is property of this bankruptcy estate which presumably the Debtor is not claiming as exempt. Therefore, this exemption needs to be determined quickly so that the assets of the bankruptcy estate are no longer consumed. Therefore, this Committee objects to this claim of exemption.

4. The Debtor seeks to claim as exempt farming equipment identified in Exhibit B-31. There is actually \$54,500 worth of items scheduled in Exhibit B-31. The Debtor has failed to identify which equipment he wishes to claim as exempt. The Committee also objects to this exemption in that the Debtor is not a farmer permitted to take an exemption under M.S.A. §550.37(5). Therefore, the Committee requests that this exemption be disallowed in its entirety. To the extent the Debtor is allowed any

exemption, the Debtor must specifically identify those assets which he seeks to claim as exempt, the value of those assets and the exemption taken out of each of those assets.

THEREFORE, the Official Committee of Unsecured Creditors hereby objects to the Debtor's claim of exemptions as described above. The Committee requests that the exemptions be disallowed consistent with this objection.

Dated this 3rd day of May 2004.

/s/ Kip M. Kaler

Kip M. Kaler

KALER DOELING LAW OFFICE

Attorney for Unsecured Creditor's
Committee

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MN Attorney No. 133255

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)	Bankruptcy No. 04-60106
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Daniel S. Miller,)	Chapter 11 Bky.
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MEMORANDUM OF FACTS AND LAW

The Official Committee of Unsecured Creditors in support of its Motion Objecting to Exempt Property makes the following separate Memorandum of Facts and Law pursuant to Bankruptcy Rule 9013-2.

1. IRA-Jarvis - \$2,000 and a St. Hilaire pension/Harvest States pension – \$38,803 as exempt under M.S.A. §550.37(24). Despite request, the Debtor has provided no documentation to prove the true nature of these assets and whether they may be exempt under the particular statute.

2. Life insurance policies. The debtor can take a \$7,200 exempt from these assets. However, the Debtor has provided no documentation to prove the true nature of these assets and whether they may be exempt under the particular statute. The nonexempt portion of these assets should be liquidated expeditiously so as to minimize the consumption or diminution of these assets. The Debtor should liquidate these policies down to the exempt value before there is any further loss of these values.

3. Vehicle. The Debtor seeks to claim as exempt \$3,500 from a list of vehicles; the assets listed on B-23 contains approximately 20 items. The Debtor is limited to a single vehicle exemption. M.S.A. §550.37(12a). Therefore, the Debtor must identify the vehicle, which he seeks to claim as exempt, and the amount of his exemption. On information and belief the Committee alleges that a portion of those

assets are being consumed or depreciating. Therefore, the nonexempt portion of these assets, which are not going to be used in reorganization, should be expeditiously liquidated.

4. Farm equipment. The Debtor seeks to claim as exempt farming equipment. The Debtor schedules \$54,500 in farming equipment. The Debtor exempts \$13,000 of that equipment. The Debtor is not a farmer; therefore he is not permitted to take an exemption under M.S.A. §550.37(5). Therefore, the Committee requests that this exemption be disallowed in its entirety. To the extent the Debtor is allowed any exemption, the Debtor must specifically identify those assets which he seeks to claim as exempt, the value of those assets and the exemption taken out of each of those assets.

Therefore, the Official Committee of Unsecured Creditors requests that the Debtor's claim of exemptions be disallowed except consistent with these objections.

Dated this 3rd day of May 2004.

/s/ Kip M. Kaler
Kip M. Kaler
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)	Bankruptcy No. 04-60106
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Daniel S. Miller,)	Chapter 11 Bky.
Debtor.)	
)	<u>ORDER</u>

The Court having before it a Motion Objecting to Exempt Property by the Official Committee of Unsecured Creditors and having conducted a hearing on the matter, the parties appearing as noted on the record, and to the extent necessary having stated its findings of fact and conclusions of law on the record;

IT IS THE ORDER OF THE COURT that the Debtor's claim of exemptions in the following assets are disallowed:

1. IRA-Jarvis - \$2,000 and a St. Hilaire pension/Harvest States pension. The Debtor may later be allowed an exemption in these assets upon satisfactory proof of the true nature and value of these assets.

2. Life insurance policies. The Debtor shall be allowed an exemption of \$7,200 in these assets upon satisfactory proof of the true nature and value of these assets and identification of the policy he wishes to claim as exempt and its value. The Debtor should forthwith present to the court a motion to liquidate the nonexempt portions of these policies.

3. Vehicle. The Debtor shall be granted a single vehicle exemption. The Debtor shall identify that vehicle and the portion he seeks to claim as exempt.

4. Farm equipment. The Debtor is not allowed any portion of this exemption.

Dated this ____ day of _____, 2004.

Honorable Dennis D. O'Brien
Judge of U.S. Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)	Bankruptcy No. 04-60106
)	
Daniel S. Miller,)	Chapter 11 Bky.
Debtor.)	
_____)	<u>NOTICE OF HEARING</u>

The unsecured creditor's committee, by and through its attorney, has made a Motion Objecting to Exempt Property. The Court will hold a hearing on this motion on July 27, 2004 at 1:00 p.m. before the Honorable Dennis D. O'Brien, the United States Bankruptcy Judge, Courtroom No. 2, United States Bankruptcy Court for the District of Minnesota, 118 South Mill Street, Fergus Falls, Minnesota.

Any response to the unsecured creditor's committee's Motion Objecting to Exempt Property must be filed and delivered to the Clerk of District Court not later than July 22, 2004, 3 days before the time set for hearing, or served and filed by mail not later than July 16, 2004, 7 days before the time set for the hearing. Unless a response opposing the motion is timely filed and delivered/served, the Court may grant the motion without a hearing. See local Bankruptcy Rule 9006-1.

Dated this 3rd day of May, 2004.

/s/Kip M. Kaler
Kip M. Kaler
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Attorney for Unsecured Creditors
Committee
111 Robert Street
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_____)	<u>CERTIFICATE OF SERVICE</u>

Kip M. Kaler of Fargo, ND, swears that on May 3, 2004, he mailed in first class postage-paid envelopes and deposited same in the post office at Fargo, ND, a

**MOTION OBJECTING TO EXEMPT PROPERTY, MEMORANDUM OF FACTS AND
LAW, NOTICE OF HEARING and proposed ORDER**

to the parties listed below:

SEE ATTACHED

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